

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TRINH LE)	
Claimant)	
VS.)	
)	Docket No. 228,362
NATIONAL BEEF PACKING)	
Respondent)	
AND)	
)	
WAUSAU INSURANCE COMPANIES)	
Insurance Carrier)	

ORDER

Claimant requested Appeals Board review of Administrative Law Judge Pamela J. Fuller's September 1, 2000 Award.

APPEARANCES

Claimant appeared by and through her attorney, Chris A. Clements of Wichita, Kansas. Respondent and its insurance carrier appeared by and through their attorney, D. Shane Bangerter of Dodge City, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and has adopted the stipulations in the Award. Also, the record contains the February 21, 2000, report of Dirk H. Alander, M.D., who was ordered by the Administrative Law Judge to conduct an independent medical examination of claimant.

ISSUES

The Administrative Law Judge awarded claimant a 7 percent permanent partial general disability based on the permanent functional impairment rating opinion of Dr. Alander, who was appointed by the Administrative Law Judge to conduct an independent medical examination of claimant. Work disability was not an issue.

On appeal, claimant contends that her permanent partial general disability award should be based on the 28 percent whole body functional impairment rating of Pedro A. Murati, M.D., who examined claimant on February 11, 1998, at the request of claimant's

attorney. The Administrative Law Judge stated one of the reasons she adopted Dr. Alander's rating was because it was comparable to the 5 percent rating given by Dr. C. Reiff Brown. Claimant argues that Dr. Brown's opinion cannot be considered as evidence because he did not indicate that he utilized the American Medical Association's Guides to the Evaluation of Permanent Impairment, Fourth Edition, in arriving at his opinion as required by statute.¹

Conversely, respondent requests the Appeals Board affirm the Administrative Law Judge's Award. Respondent argues the Administrative Law Judge was correct when she based her award on Dr. Alander's 7 percent rating. In respondent's brief to the Appeals Board, respondent also argues that the parties agreed to a weekly fringe benefits cost of \$20.21 instead of the \$35.33 weekly figure argued in claimant's submission letter and adopted by the Administrative Law Judge in determining that claimant's average weekly wage was \$467.33.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, and considering the arguments contained in the parties' briefs, the Appeals Board finds the Award should be affirmed.

The Appeals Board finds the Administrative Law Judge's findings and conclusions, as expressed in the Award, are accurate and supported by the record. It is not necessary to repeat those findings and conclusions in this order. The Appeals Board approves those findings and conclusions and adopts them as its own.

In particular, the Appeals Board disagrees with the claimant's argument that Dr. Murati's 28 percent functional impairment rating is the most accurate because Dr. Murati had the opportunity to examine and rate claimant on February 11, 1998, shortly after her last day worked for the respondent of January 26, 1998.

The record reflects that following Dr. Murati's February 11, 1998 examination of claimant, claimant was then seen by Christopher R. Wilson, M.D. Dr. Wilson was the first physician appointed by the Administrative Law Judge to examine claimant. Dr. Wilson saw claimant in June of 1998 and found claimant had not met maximum medical improvement. He recommended further treatment of trigger point injections. But Dr. Wilson moved out of the area before the treatment was implemented.

At respondent's request, Dr. Brown, an orthopedic surgeon, saw claimant first on September 23, 1998, and after examining claimant he also found claimant had not met maximum medical improvement. Dr. Brown diagnosed claimant with myofascial pain syndrome of the scapular and shoulder musculature bilaterally as well as mild rotator cuff

¹ See K.S.A. 1997 Supp. 44-510e.

tendonitis on the right. Dr. Brown also recommended treatment in the form of trigger point injections. When claimant returned for such treatment she was at that time pregnant and medications could not be administered.

After claimant's pregnancy, she returned to see Dr. Brown for treatment on August 23, 1999. Trigger point injections were administered at that time. Claimant was seen again for further trigger point injections on September 8, 1999. The last time Dr. Brown saw claimant was October 6, 1999. Claimant had not received any benefits from the last trigger point injections. Dr. Brown, at that point, decided claimant was at maximum medical improvement and released claimant with a 5 percent whole body functional impairment rating and imposed permanent restrictions on claimant's work activities.

The Appeals Board disagrees with claimant's argument that Dr. Murati's functional impairment rating is the most accurate and credible because he saw claimant soon after her last day worked with respondent. The Appeals Board finds that at the time Dr. Murati saw claimant she was not at maximum medical improvement. This is evidenced by both Dr. Wilson's and Dr. Brown's opinions that claimant was in need of further treatment after Dr. Murati had examined and rated her.

As found by the Administrative Law Judge, the Appeals Board concludes Dr. Alander's 7 percent functional impairment rating best represents claimant's impairment of function rating that resulted from her work-related injuries.

In regard to respondent's allegation that the fringe benefits weekly costs were \$20.21 instead of \$35.33 as found by the Administrative Law Judge, the Appeals Board has thoroughly reviewed the record and the Workers Compensation Division's file and cannot find such an agreement. Accordingly, the Appeals Board affirms the Administrative Law Judge's finding that the cost of fringe benefits was \$35.33 resulting in claimant's average weekly wage of \$467.33.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Pamela J. Fuller's September 1, 2000, Award should be, and the same is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of March 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Chris A. Clements, Wichita, KS
D. Shane Bangerter, Dodge City, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director